STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of D.A.M., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DAVID EDWARD KIDDON,

Respondent-Appellant.

UNPUBLISHED
February 14, 2003

No. 240074
Wayne Circuit Court
Family Division
LC No. 92-297638

Before: Murphy, P.J., and Cavanagh and Neff, JJ.

MEMORANDUM.

Respondent appeals as of right from the trial court's order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), (g) and (j). We affirm.

Respondent argues that petitioner failed to establish a statutory ground for termination by clear and convincing evidence. We disagree. This Court reviews a trial court's findings of fact in a parental termination case under the clearly erroneous standard. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Once petitioner proves a statutory ground for termination by clear and convincing evidence, "the court must issue an order terminating parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests." *In re Trejo Minors*, 462 Mich 341, 350, 354; 612 NW2d 407 (2000). The court should decide the "best interests" question based upon all of the evidence presented and without regard to which party produced the evidence. *Id*. at 356.

Respondent's primary argument is that, because no witnesses were presented at the termination hearing, there was no evidentiary basis to terminate his parental rights. We disagree. At the termination hearing, in lieu of calling witnesses, petitioner asked the court to take judicial notice of all earlier proceedings and orders in this matter. There was no error in this procedure because termination proceedings are considered a single continuous proceeding, whereby evidence admitted at an earlier hearing may be considered at a subsequent hearing, *In re LaFlure*, 48 Mich App 377, 391; 210 NW2d 482 (1973), and the court is otherwise permitted to take judicial notice of its own files. MRE 201; *In re Stowe*, 162 Mich App 27, 32-33; 412 NW2d 655

(1987). See, also, *In re Harmon*, 140 Mich App 479, 481; 364 NW2d 354 (1985) (at a dispositional hearing to terminate parental rights, the court is permitted, in its discretion, to consult all records related to the proceedings over the child's custody). Further, the court is authorized to receive all relevant and material evidence, even though such evidence may not be admissible at trial. MCR 5.974(F)(2). Thus, the trial court did not err by deciding this matter on the basis of the previously established record.[1]

Further, a review of the record discloses that the trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. The record establishes that, since the child's removal from his mother's custody in 2000, respondent failed to take any steps to demonstrate his willingness or ability to care for the child.[2]

Affirmed.

/s/ William B. Murphy
/s/ Mark J. Cavanagh
/s/ Janet T. Neff

---

[1] We also find no merit to respondent's claim that, because the court took judicial notice of the record in this matter, it necessarily applied a lesser "preponderance of the evidence" standard. On the contrary, the court expressly referred to the proper clear and convincing evidence standard in its decision.

[2] The court's lack of knowledge concerning respondent's circumstances at the time of the termination hearing was due to respondent's own lack of participation in this matter and failure to make any effort to seek custody of the child during these proceedings.